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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JOSHUA CHATWIN,

Plaintiff,

v.

DRAPER CITY; DRAPER CITY POLICE
DEPARTMENT; POLICE CHIEF MAC
CONNOLE; OFFICER J. PATTERSON, in
his individual and official capacity;
OFFICER DAVID HARRIS, in his
individual and official capacity; OFFICER
HEATHER BAUGH, in her individual and
official capacity; and JOHN DOES 1-10,

Defendants.

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION IN LIMINE NO. 5: TO
EXCLUDE TESTIMONY AND
EVIDENCE REGARDING PLAINTIFF'S
JULY 8, 2010 ARREST

Civil No. 2:14-cv-375
Judge Dale A. Kimball
Magis. Judge Dustin B. Pead

Pursuant to Fed. R. Evid. 401 and 611, Plaintiff, Joshua Chatwin ("Chatwin"), by and
through his counsel, Lisa A. Marcy, John K. Johnson and Dominic Gianna, responds to

Defendants' Motion in Limine No. 5 to Exclude Testimony and Evidence Regarding Plaintiff's July 8, 2010, Arrest ("MIL No. 5") as follows.

ARGUMENT

Testimony and Evidence Regarding Plaintiff's July 8, 2010, Arrest are Relevant.

In Defendants' MIL No. 5, Defendants failed to mention that the July 8, 2010, arrest occurred as a direct result of the May 18, 2010, incident. Defendants only state that the "officers responded to Plaintiff's residence to execute several outstanding felony warrants for his arrest"; however, a cursory review of those two police reports show that the officers went to Chatwin's residence to arrest Chatwin for disarming a police officer: "The main warrant was out of Draper for disarming a peace officer felony one, bail set at \$50,000.00." Exhibit A to Defendants' MIL No. 5. "Detective Fackrell was looking for Joshua Chatwin, who had an outstanding Felony 1 warrant for Disarming a Police Officer." Exhibit B to Defendants' MIL No. 5. The K-9 unit was deployed and, upon information and belief, Draper City sent many police officers to the residence.

Chatwin has raised a *Monell* claim in which he states that he was injured as a result of policies and customs of Draper City. It is therefore probative of whether this large show of force was part of the customs and policies of the City. (This fact was included in the Amended Complaint.)

Defendants expressed concern that the jury may be left with the impression that the Draper City Police Department had improperly harassed or targeted Chatwin. Defendants have listed members of the Draper City Police Department as potential witnesses, so those witnesses can address this issue on direct examination. The jury as fact finder should be tasked with exactly this question as to whether the police department improperly harassed or targeted

Chatwin because of Patterson's allegations of Chatwin's alleged assault upon him. Chatwin should therefore be allowed to testify about the acts of these officers in relation to the May 18, 2010, incident in that they are relevant as to the City's customs, practices, and policies.

CONCLUSION

Based upon the foregoing Chatwin requests the inclusion of all testimony and evidence regarding his July 18, 2010, arrest, because it is relevant to his Fourth Amendment claims.

DATED this 10th day of January 2017.

CLYDE SNOW & SESSIONS

/s/ Lisa A. Marcy

Lisa A. Marcy
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January 2017, I caused a true and accurate copy of the foregoing Memorandum in Opposition to Defendants' Motion in Limine No. 5 to be filed via the Court's ECF system, which in turn sent copies to counsel of record in accordance with the Court's protocols.

/s/ Michelle Carter